

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

RICKEY WARD,

Plaintiff,

vs.

STATE FARM MUTUAL AUTOMOBILE  
 INSURANCE COMPANY,

Defendant.

2:12-cv-00835-MMD -VCF

**ORDER**

Before the court is the parties' Stipulated Confidentiality and Protective Order (#13) which the court approves, with the exception of paragraph 9. This order reminds counsel that there is a presumption of public access to judicial files and records. Paragraph 9 of the parties' proposed stipulation was not approved and was deleted by the court. Paragraph 9 stated that "[a]ny Court filings which contain a document or other material designated as confidential, shall only be filed and submitted under seal." (#13).

Special Order 109 requires the Clerk of the Court to maintain the official files for all cases filed on or after November 7, 2005, in electronic form. The electronic record constitutes the official record of the court. Attorneys must file documents under seal using the court's electronic filing procedures. *See* LR 10-5(b). That rule provides:

Unless otherwise permitted by statute, rule or prior Court order, papers filed with the Court under seal shall be accompanied by a motion for leave to file those documents under seal, and shall be filed in accordance with the Court's electronic filing procedures. If papers are filed under seal pursuant to prior Court order, the papers shall bear the following notation on the first page, directly under the case number: "FILED UNDER SEAL PURSUANT TO COURT ORDER DATED \_\_\_\_." All papers filed under seal will remain sealed until such time as the Court may deny the motion to seal or enter an order to unseal them, or the documents are unsealed pursuant to Local Rule.

*Id.*

A party seeking to file a confidential document or utilize a confidential document at trial must also comply with the Ninth Circuit's directives in *Kamakana v. City and County of Honolulu*, 447 F.3d 1172

1 (9th Cir. 2006):

2 Unless a particular court record is one “traditionally kept secret,” a “strong  
3 presumption in favor of access” is the starting point. ... A party seeking to  
4 seal a judicial record then bears the burden of overcoming this strong  
5 presumption by meeting the “compelling reasons” standard. ... that is, the  
6 party must “articulate[ ] compelling reasons supported by specific factual  
7 findings,” that outweigh the general history of access and the public  
8 policies favoring disclosure ....

9 In general, “compelling reasons” sufficient to outweigh the public’s  
10 interest in disclosure and justify sealing court records exist when such  
11 “court files might have become a vehicle for improper purposes,” such as  
12 the use of records to gratify private spite, promote public scandal, circulate  
13 libelous statements, or release trade secrets. ... The mere fact that the  
14 production of records may lead to a litigant’s embarrassment, incrimination,  
15 or exposure to further litigation will not, without more, compel the court to  
16 seal its records.

17 *Id.* at 1178-79 (citations omitted).

18 To justify the sealing of discovery materials attached to non-dispositive motions, a particularized  
19 showing of good cause is required. *Id.* at 1180. To justify the sealing of discovery materials attached to  
20 dispositive motions or used at trial, however, a higher threshold is required: a particularized showing that  
21 *compelling reasons* support secrecy. *Id.* “A ‘good cause’ showing will not, without more, satisfy a  
22 ‘compelling reasons’ test.” *Id.* When private discovery materials are attached to a dispositive motion (or  
23 response or reply) or used at trial, such materials become a part of a judicial record, and as such “are public  
24 documents almost by definition, and the public is entitled to access by default.” *Id.*

25 Accordingly, and for good cause shown,

26 **IT IS ORDERED** that:

- 27 1. Paragraph 9 of the parties’ Stipulated Confidentiality and Protective Order (#13) is **NOT**  
28 **APPROVED.**
2. The parties shall comply with the requirements of Local Rule 10-5(b) and the Ninth  
Circuit’s decision in *Kamakana*, 447 F.3d 1172, with respect to any documents filed under  
seal or used at trial.

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3. The parties' Stipulated Confidentiality and Protective Order (#13), as modified and signed by the court, is **APPROVED**.

Dated this 30th day of July, 2012.



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**CAM FERENBACH**  
**UNITED STATES MAGISTRATE JUDGE**

**RECEIVED**  
JUL 24 2012

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*Farm")*

8  
9 UNITED STATES DISTRICT COURT

10 DISTRICT OF NEVADA

11 RICKEY WARD,

12 Plaintiff,

13 vs.

14 STATE FARM MUTUAL AUTOMOBILE  
15 INSURANCE COMPANY, a corporation;  
DOES I through X, inclusive, and ROE  
16 CORPORATIONS I through X, inclusive,

17 Defendants.

CASE NO.: 2:12-cv-00835-MMD-VCF

STIPULATED CONFIDENTIALITY AND  
PROTECTIVE ORDER

18  
19 It appearing to the Court that the Plaintiff, Rickey Ward ("Plaintiff"), and Defendant  
20 STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY ("State Farm"), are in  
21 agreement that State Farm possesses proprietary policies and procedures that include  
22 confidential information that may be subject to discovery in the proceedings in this matter  
23 but which should not be made available to the public generally, this Court hereby orders  
24 that:

25 1. This Confidentiality Agreement and Protective Order shall govern certain  
26 discovery and document production among the parties, as well as discovery and  
27 document production from third parties, in the above-referenced action.

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2. For purposes of this Confidentiality Agreement and Protective Order, the term "Confidential Information" shall refer to: (1) information which any party or non-party believes in good faith to be a trade secret or confidential research, development, commercial, or other proprietary business information within the meaning of FRCP 26(c)(1)(G); and (2) documents and/or testimony that may reveal confidential, proprietary, personal or commercially sensitive information. Such Confidential Information may be contained in any written, printed, recorded, or graphic matter of any kind, and shall retain its confidential designation regardless of the medium on which it is produced, reproduced, or stored. Such Confidential Information may also be elicited at deposition or through written discovery.

3. Whenever any party or non-party desires to designate information contained in a document as Confidential Information, the designating party shall mark each page of the document with the word "CONFIDENTIAL" and identify such Confidential Information at the time of production. Confidential Information may be used in the course of depositions in accordance with this Confidentiality Order.

4. Transcripts or exhibits from any deposition or hearing shall be temporarily designated as "Confidential" and be treated as subject to the terms of this Stipulation. Within forty-five (45) days of receipt of such transcripts and exhibits, Counsel will designate the pages of the transcripts or exhibits which shall remain designated as "Confidential" and will advise all other parties. If no designation is made within forty-five (45) days, the entire transcript and all exhibits will be deemed not confidential.

5. All documents produced or information disclosed and any other records designated as "confidential" by State Farm shall be revealed only to:

- a) Plaintiff;
- b) Plaintiff's counsel of record in this case;
- c) Defendant;
- d) Defendant's counsel of record in this case;

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- e) Paralegals and secretarial employees under counsel's direct supervision;
- f) Outside photocopying, translating, document management, and exhibit preparation services engaged by a party for purposes of this litigation;
- g) Persons employed by counsel to act as consultants or experts in this action;
- h) Any other person State Farm agrees in writing may be shown such documents; and
- i) The Court and court personnel, stenographic reporters, and videographers at depositions taken in this action, and any jury empanelled in this action, subject to the protections of Paragraphs 3, 4, and 9 of this Order and to any order the Court subsequently enters to preserve the confidentiality of documents used at trial;

6. The information considered as "confidential" and disclosed only in accord with the terms of Paragraph 5 shall include, without limitation, any claims manual, training materials, and any other information or documentation supplied by State Farm and designated as "Confidential."

7. Documents deemed confidential by State Farm shall be used only for the purposes of prosecuting or defending this action. Under no circumstances shall information or materials covered by this Protective Order be disclosed to or discussed with anyone other than the individuals designated in Paragraph 5.

8. Prior to disclosure of any documents designated as "confidential" to any individual who is not a signator to this Agreement, counsel shall require such individual to read this Protective Order and sign the Agreement which is attached hereto as Exhibit A and provide a copy of the signed Agreement to counsel for State Farm.

~~9. Any Court filings which contain a document or other material designated as confidential, shall only be filed and submitted under seal.~~

1           10. This Order is subject to revocation and modification by Order of the Court  
2 upon written stipulation of the parties, or upon motion and reasonable notice, including  
3 opportunity for hearing and presentation of evidence.

4           11. If any Party believes that it is not bound by this Order respecting documents  
5 designated "Confidential," it shall give notice to counsel for State Farm at least 30 days  
6 before the Party uses or discloses such documents in a manner prohibited by this Order,  
7 to enable State Farm to contest the intended use through a motion to the Court.

8           12. Within 30 days of the final termination of this case, all documents and  
9 information subject to this Order, including any copies or extracts or summaries thereof, or  
10 documents containing information taken therefrom, shall be returned to counsel for State  
11 Farm. In the alternative, within 30 days of the final termination of this case, all such  
12 documents, including copies or extracts or summaries thereof, may be shredded or  
13 disposed of in a manner to ensure the destruction thereof and a declaration certifying such  
14 destruction or disposal provided to State Farm.

15           13. In any action or proceeding to enforce this Stipulated Protective Order, or  
16 pursuant to paragraph 12, the prevailing party shall be entitled to recover its reasonable  
17 attorneys' fees and costs, without limiting any other relief that may be available.

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1           14. This Order shall remain in effect after the conclusion of this case and the  
2 Court shall retain jurisdiction to enforce its terms and to prevent or punish violations of it.

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4 DATED this 18 day of July, 2012

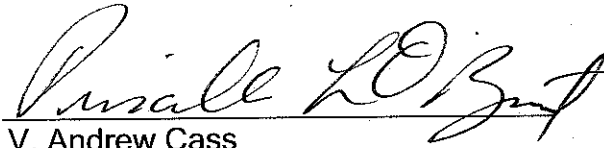
DATED this 30 day of July, 2012

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6 By:

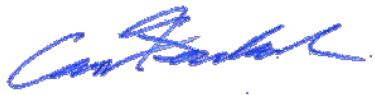
  
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15 IT IS SO ORDERED.

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19 CAM FERENBACH  
20 UNITED STATES MAGISTRATE JUDGE  
21 DATED: July 30, 2012  
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